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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 ELECTRONIC FRONTIER FOUNDATION,

15 Plaintiff,

16 v.

17 DEPARTMENT OF DEFENSE, *et al.*,

18 Defendants.
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Case No. CV 09-5640 SI

**STIPULATION TO CHANGE TIME
FOR FILING DISPOSITIVE MOTIONS**

21 Pursuant to Fed. R. Civ. P. 6(b)(1) and Civil L.R. 6-2, the parties, by and through
22 undersigned counsel, hereby stipulate and respectfully move to change the time for the filing of
23 dispositive motions until after the Case Management Conference on July 16, 2010. The requested
24 change will not significantly affect the present schedule for the case. In accordance with Civil
25 L.R. 6-2(a), this motion is supported by the Declaration of Kimberly L. Herb, counsel for
26 Defendants, filed herewith and a proposed order below.
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1 1. The parties submit, and the Declaration of Ms. Herb establishes, that there is good
2 cause for the requested change as follows:

3 a. During the Initial Case Management Conference on March 12, 2010, the
4 parties agreed that the Executive Office for United States Attorneys (“EOUSA”), Bureau
5 of Alcohol, Tobacco, Firearms and Explosives (“ATF”), the Department of the Treasury
6 (“Treasury”), and the Department of Justice, Criminal Division (“Criminal Division”) and
7 Drug Enforcement Administration (“DEA”) would submit dispositive motions on June 11,
8 2010. (Docket 13.) The parties further agreed to discuss a time for dispositive motions
9 for the remaining defendants and subcomponents—the Central Intelligence Agency
10 (“CIA”), Department of Homeland Security (“DHS”), Office of the Director of National
11 Intelligence (“ODNI”), Federal Bureau of Investigation (“FBI”), and Department of
12 Defense (“DOD”)—during the Further Case Management Conference scheduled for July
13 16, 2010.

14 b. Subsequent to the Initial Case Management Conference, and most recently
15 on May 21, 2010, Plaintiff indicated its intention to file new or amended FOIA requests
16 with ATF, CIA, DEA, DOD, EOUSA, FBI, and the Criminal Division. EFF needed to
17 file new FOIA requests with EOUSA and ATF to correct an earlier failure to exhaust
18 administrative remedies. EFF also filed new and amended requests¹ to address a good
19 faith disagreement between the parties—EFF believed its original requests encompassed a
20 request for third-party documents within the agencies’ possession, and Defendants
21 believed the original requests only sought agency-authored documents. Many of the

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¹ References to the “new and amended requests” or requests “recently filed” refer to EFF’s FOIA requests relating to this matter dated as follows: requests with the CIA, FBI, and DOD dated May 20, 2010; requests with ATF, DEA, U.S. Air Force, and the Criminal Division dated May 21, 2010; and requests with EOUSA dated April 7, 2010 and May 21, 2010.

1 Defendants had not previously searched for documents authored by third parties, and these
2 Defendants will need additional time to process EFF's recent requests. EFF notes that its
3 submission of new and amended FOIA requests was not a concession that third-party
4 documents were outside the scope of its original requests, but was intended as a
5 clarification that EFF believed those documents to be included within the scope of those
6 requests.
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8 c. The briefing schedule originally entered into by the parties in March 2010
9 was based on the FOIA requests as originally filed. If the parties adhere to the present
10 schedule in the wake of EFF's service of new and amended FOIA requests, this litigation
11 might include more motions and briefs than initially contemplated, as EFF would have to
12 file multiple motions to consolidate the new and amended requests and rejoin EOUSA and
13 ATF to the present action.
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15 d. In an effort to conserve the Court's and parties' resources, the parties have
16 agreed solely for the purposes of the present case to the following:

17 i. EFF will exhaust in a timely fashion its administrative remedies
18 with regard to its recently filed FOIA requests with EOUSA and ATF. If EFF
19 seeks to challenge EOUSA's or ATF's response after exhaustion, (1) EFF will file
20 a new action against either or both of those agencies and seek to consolidate it with
21 the present action, and (2) Defendants agree that they will not oppose
22 consolidation of a new action against EOUSA and ATF emanating from the
23 recently filed FOIA requests;
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25 ii. Defendants agree that they will not require EFF to pursue
26 administrative remedies, file complaints, or seek consolidation for any other aspect
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1 of the new and amended requests, with the exception of the process described in
2 paragraph 1(d)(i) concerning EOUSA and ATF;

3 iii. Subject to the FOIA and agency regulations, EFF has the right to
4 file FOIA requests on any issue of its choosing; EFF agrees, however, that it will
5 not seek to consolidate any litigation arising from FOIA requests submitted after
6 the date of this stipulation with the present action; and

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8 iv. The parties agree that EFF retains the right to challenge
9 Defendants' document processing and production, including the adequacy of the
10 searches and any claimed exemptions, in this case.

11 2. There have been no previous modifications of time in this case.

12 3. The requested enlargement will not significantly affect the present schedule for the
13 case.
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15 a. While this stipulation and proposed order will delay briefing on Plaintiff's
16 FOIA requests as originally filed with ATF, EOUSA, Treasury, DEA, and the Criminal
17 Division, this delay is not significant in light of the fact that motions on the original
18 requests might not resolve all the issues relating to these Defendants.

19 b. The requested change of time for filing dispositive motions will not affect
20 the present schedule with regard to the CIA, DHS, ODNI, FBI, and DOD, as the parties
21 were to discuss a motions schedule with regard to these Defendants during the Further
22 Case Management Conference on July 16, 2010.

23 c. The parties propose to retain the Further Case Management Conference
24 currently scheduled with the Court on July 16, 2010. At that time, the parties will update
25 the Court on the processing of all of Plaintiff's FOIA requests to date.
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d. The parties believe that briefing on dispositive motions with regard to all the current Defendants and subcomponents can commence in early fall of this year. The parties anticipate that EOUSA and ATF, assuming timely exhaustion, will be ready to file dispositive motions at the same time as the Defendants currently party to this action.

* * *

In order to allow Defendants sufficient time to complete the processing of Plaintiff's recently filed FOIA requests, the parties hereby respectfully request that the Court change the time for the briefing scheduled for June 11, 2010 and permit the parties to discuss a new briefing schedule during the Further Case Management Conference scheduled on July 16, 2010.

DATED: June 10, 2010

Respectfully submitted,

/s/ Marcia Hofmann
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Attorneys for Plaintiff

Attorneys for Defendants

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____



SUSAN ILLSTON
United States District Judge

GENERAL ORDER NO. 45(X) CERTIFICATION

I attest that I have obtained Marcia Hoffmann's concurrence in the filing of this document.

/s/ Kimberly L. Herb

Kimberly L. Herb

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